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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,898	01/21/2004	Terrence Bender	B94.2-11442US01	4199

490 7590 12/23/2004

VIDAS, ARRETT & STEINKRAUS, P.A.,  
6109 BLUE CIRCLE DRIVE  
SUITE 2000  
MINNETONKA, MN 55343-9185

EXAMINER

SEMUNEGUS, LULIT

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 12/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/761,898	<b>Applicant(s)</b> BENDER, TERRENCE	
	<b>Examiner</b> Lulit Semunegus	<b>Art Unit</b> 3641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 15-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-20 are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/10/2004</u> . | 6) <input type="checkbox"/> Other: ____.  |

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C.

121:

- I. Claims 1-14, drawn a gun action assembly comprising an action rod, classified in class 89, subclass 1.42.
- II. Claim 15-20, drawn to a gun action assembly comprising a gas elbow, classified in class 89, subclass 191.01.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention II has separate utility such as propelling during firing and invention I has separate utility such as safety. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Jeremy Laabs on 12/9/04 a provisional election was made with traverse to prosecute the invention of I, claims 1-14. Affirmation of this election must be made by applicant in replying to this Office action. Claims 15-20 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless - (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-7 and 9-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Robinson et al (6,484,430). Robinson teaches a gun action assembly comprising: a receiver (col. 2, lines 43-44); a bolt carrier (100) having a cam slot (202); a bolt (101) having a cam pin (301); the cam pin located in the cam slot of the bolt carrier (col. 2, lines 58-59); and an action rod (305) comprising an elongated member, inherently fixedly attached to a receiver or recoil plate and is parallel to the longitudinal axis of the bolt-carrier (fig. 1,4); wherein the cam pin (301) engaged the action rod (305) during a portion of the bolt-carrier travel, the action rod preventing rotation of the bolt when the cam pin is engaged with the action rod (fig. 4 shows an aperture in the cam pin where the action rod passes through).

4. Claims 1-7 and 9-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Olson (6,609,319). Olson teaches a gun action assembly comprising: a bolt carrier (2) having a cam slot (56); a bolt (4) having a cam pin (10); the cam pin located in the cam slot of the bolt carrier (fig. 1); and an action

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rod (12) comprising an elongated member, inherently fixedly attached to a receiver or recoil plate and is parallel to the longitudinal axis of the bolt-carrier (fig. 1); wherein the cam pin (10) engaged the action rod (fig. 1) during a portion of the bolt-carrier travel, the action rod preventing rotation of the bolt when the cam pin is engaged with the action rod (fig. 1 shows an aperture in the cam pin where the action rod passes through).

5. Claims 12-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Knight et al (6,189,253). Knight et al teaches a tubular receiver (14) having an ejection port (70); a bolt carrier (24) having a charging handle (72), the bolt carrier (24) reciprocable in the receiver between battery and recoil positions, the charging handle (72) extending through the ejection port (70); a spring (52) for biasing the bolt carrier toward the battery position; and a bolt (46); wherein the charging handle (72) prevents rotation of the bolt-carrier within the receiver (fig. 9).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson et al (6,484,430) in view of Knight et al (6,189,253). Robinson et al do not expressly teach a charging handle which passes through an ejection port.

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Knight et al teaches a tubular receiver (14) having an ejection port (70); a bolt carrier (24) having a charging handle (72), the bolt carrier (24) reciprocable in the receiver between battery and recoil positions, the charging handle (72) extending through the ejection port (70); a spring (52) for biasing the bolt carrier toward the battery position; and a bolt (46); wherein the charging handle (72) prevents rotation of the bolt-carrier within the receiver (fig. 9). At the time of the invention, it would have been obvious to one ordinarily skilled in the art to use the receiver of Knight et al into Robinson et al invention since Robinson et al teaches that the bolt carrier will fit in a wide variety of ammunition magazines (col. 2, line 43-44).

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Luth (6,293,040) teaches a gun action assembly comprising: a receiver (102); a bolt carrier inherently having a bolt (204) having a cam slot (fig. 1), a spring (216); a bolt having a cam pin (200); and an action rod (206).

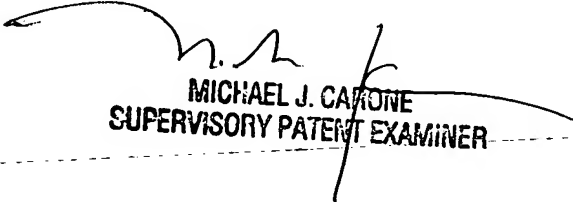
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lulit Semunegus whose telephone number is (703) 306-5960. The examiner can normally be reached on Mon-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on (703) 306-4198. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lulit Semunegus  
Examiner  
Art Unit 3641



MICHAEL J. CARONE  
SUPERVISORY PATENT EXAMINER